

Introduced by Senator Cox

February 22, 2005

An act to amend Section 11126 of the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 919, as introduced, Cox. Meetings.

(1) The Bagley-Keene Open Meeting Act requires, with specified exceptions for authorized closed sessions, that all meetings of a state body be open and public and all persons be permitted to attend meetings of a state body.

This bill would authorize the California Gambling Control Commission to hold closed sessions when considering matters that are confidential pursuant to the Tribal-State Gaming Compacts.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would find that, in order for the California Gambling Control Commission to meet its obligation, as imposed by the Tribal-State Gaming Compacts, to maintain the confidentiality of tribal information, it is necessary that the commission meet in closed session.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11126 of the Government Code, as added by Section 2 of Chapter 1113 of the Statutes of 2002, is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, “employee” does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding

1 closed sessions to prepare, approve, grade, or administer
2 examinations.

3 (2) Prevent an advisory body of a state body that administers
4 the licensing of persons engaged in businesses or professions
5 from conducting a closed session to discuss matters that the
6 advisory body has found would constitute an unwarranted
7 invasion of the privacy of an individual licensee or applicant if
8 discussed in an open meeting, provided the advisory body does
9 not include a quorum of the members of the state body it advises.
10 Those matters may include review of an applicant's
11 qualifications for licensure and an inquiry specifically related to
12 the state body's enforcement program concerning an individual
13 licensee or applicant where the inquiry occurs prior to the filing
14 of a civil, criminal, or administrative disciplinary action against
15 the licensee or applicant by the state body.

16 (3) Prohibit a state body from holding a closed session to
17 deliberate on a decision to be reached in a proceeding required to
18 be conducted pursuant to Chapter 5 (commencing with Section
19 11500) or similar provisions of law.

20 (4) Grant a right to enter any correctional institution or the
21 grounds of a correctional institution where that right is not
22 otherwise granted by law, nor shall anything in this article be
23 construed to prevent a state body from holding a closed session
24 when considering and acting upon the determination of a term,
25 parole, or release of any individual or other disposition of an
26 individual case, or if public disclosure of the subjects under
27 discussion or consideration is expressly prohibited by statute.

28 (5) Prevent any closed session to consider the conferring of
29 honorary degrees, or gifts, donations, and bequests that the donor
30 or proposed donor has requested in writing to be kept
31 confidential.

32 (6) Prevent the Alcoholic Beverage Control Appeals Board
33 from holding a closed session for the purpose of holding a
34 deliberative conference as provided in Section 11125.

35 (7) (A) Prevent a state body from holding closed sessions
36 with its negotiator prior to the purchase, sale, exchange, or lease
37 of real property by or for the state body to give instructions to its
38 negotiator regarding the price and terms of payment for the
39 purchase, sale, exchange, or lease.

1 (B) However, prior to the closed session, the state body shall
2 hold an open and public session in which it identifies the real
3 property or real properties that the negotiations may concern and
4 the person or persons with whom its negotiator may negotiate.

5 (C) For purposes of this paragraph, the negotiator may be a
6 member of the state body.

7 (D) For purposes of this paragraph, “lease” includes renewal
8 or renegotiation of a lease.

9 (E) Nothing in this paragraph shall preclude a state body from
10 holding a closed session for discussions regarding eminent
11 domain proceedings pursuant to subdivision (e).

12 (8) Prevent the California Postsecondary Education
13 Commission from holding closed sessions to consider matters
14 pertaining to the appointment or termination of the Director of
15 the California Postsecondary Education Commission.

16 (9) Prevent the Council for Private Postsecondary and
17 Vocational Education from holding closed sessions to consider
18 matters pertaining to the appointment or termination of the
19 Executive Director of the Council for Private Postsecondary and
20 Vocational Education.

21 (10) Prevent the Franchise Tax Board from holding closed
22 sessions for the purpose of discussion of confidential tax returns
23 or information the public disclosure of which is prohibited by
24 law, or from considering matters pertaining to the appointment or
25 removal of the Executive Officer of the Franchise Tax Board.

26 (11) Require the Franchise Tax Board to notice or disclose any
27 confidential tax information considered in closed sessions, or
28 documents executed in connection therewith, the public
29 disclosure of which is prohibited pursuant to Article 2
30 (commencing with Section 19542) of Chapter 7 of Part 10.2 of
31 the Revenue and Taxation Code.

32 (12) Prevent the Board of Corrections from holding closed
33 sessions when considering reports of crime conditions under
34 Section 6027 of the Penal Code.

35 (13) Prevent the State Air Resources Board from holding
36 closed sessions when considering the proprietary specifications
37 and performance data of manufacturers.

38 (14) Prevent the State Board of Education or the
39 Superintendent of Public Instruction, or any committee advising
40 the board or the superintendent, from holding closed sessions on

those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing of Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed

1 session, if feasible, and in any case no later than one week after
2 the closed session. The memorandum shall be exempt from
3 disclosure pursuant to Section 6254.25.

4 (iii) For purposes of this subdivision, “litigation” includes any
5 adjudicatory proceeding, including eminent domain, before a
6 court, administrative body exercising its adjudicatory authority,
7 hearing officer, or arbitrator.

8 (iv) Disclosure of a memorandum required under this
9 subdivision shall not be deemed as a waiver of the lawyer-client
10 privilege, as provided for under Article 3 (commencing with
11 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

12 (f) In addition to subdivisions (a), (b), and (c), nothing in this
13 article shall be construed to do any of the following:

14 (1) Prevent a state body operating under a joint powers
15 agreement for insurance pooling from holding a closed session to
16 discuss a claim for the payment of tort liability or public liability
17 losses incurred by the state body or any member agency under
18 the joint powers agreement.

19 (2) Prevent the examining committee established by the State
20 Board of Forestry and Fire Protection, pursuant to Section 763 of
21 the Public Resources Code, from conducting a closed session to
22 consider disciplinary action against an individual professional
23 forester prior to the filing of an accusation against the forester
24 pursuant to Section 11503.

25 (3) Prevent an administrative committee established by the
26 California Board of Accountancy pursuant to Section 5020 of the
27 Business and Professions Code from conducting a closed session
28 to consider disciplinary action against an individual accountant
29 prior to the filing of an accusation against the accountant
30 pursuant to Section 11503. Nothing in this article shall be
31 construed to prevent an examining committee established by the
32 California Board of Accountancy pursuant to Section 5023 of the
33 Business and Professions Code from conducting a closed hearing
34 to interview an individual applicant or accountant regarding the
35 applicant’s qualifications.

36 (4) Prevent a state body, as defined in subdivision (b) of
37 Section 11121, from conducting a closed session to consider any
38 matter that properly could be considered in closed session by the
39 state body whose authority it exercises.

1 (5) Prevent a state body, as defined in subdivision (d) of
2 Section 11121, from conducting a closed session to consider any
3 matter that properly could be considered in a closed session by
4 the body defined as a state body pursuant to subdivision (a) or (b)
5 of Section 11121.

6 (6) Prevent a state body, as defined in subdivision (c) of
7 Section 11121, from conducting a closed session to consider any
8 matter that properly could be considered in a closed session by
9 the state body it advises.

10 (7) Prevent the State Board of Equalization from holding
11 closed sessions for either of the following:

12 (A) When considering matters pertaining to the appointment
13 or removal of the Executive Secretary of the State Board of
14 Equalization.

15 (B) For the purpose of hearing confidential taxpayer appeals
16 or data, the public disclosure of which is prohibited by law.

17 (8) Require the State Board of Equalization to disclose any
18 action taken in closed session or documents executed in
19 connection with that action, the public disclosure of which is
20 prohibited by law pursuant to Sections 15619 and 15641 of this
21 code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455,
22 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of
23 the Revenue and Taxation Code.

24 (9) Prevent the California Earthquake Prediction Evaluation
25 Council, or other body appointed to advise the Director of the
26 Office of Emergency Services or the Governor concerning
27 matters relating to volcanic or earthquake predictions, from
28 holding closed sessions when considering the evaluation of
29 possible predictions.

30 (g) This article does not prevent ~~either~~ *any* of the following:

31 (1) The Teachers' Retirement Board or the Board of
32 Administration of the Public Employees' Retirement System
33 from holding closed sessions when considering matters
34 pertaining to the recruitment, appointment, employment, or
35 removal of the chief executive officer or when considering
36 matters pertaining to the recruitment or removal of the Chief
37 Investment Officer of the State Teachers' Retirement System or
38 the Public Employees' Retirement System.

1 (2) The Commission on Teacher Credentialing from holding
2 closed sessions when considering matters relating to the
3 recruitment, appointment, or removal of its executive director.

4 (3) *The California Gambling Control Commission from*
5 *holding closed sessions when considering matters that are*
6 *confidential pursuant to the Tribal-State Gaming Compacts.*

7 (h) This section shall become operative on January 1, 2006.

8 SEC. 2. The Legislature finds and declares that Section 1 of
9 this act, which amends Section 11126 of the Government Code,
10 imposes a limitation on the public's right of access to the
11 meetings of public bodies or the writings of public officials and
12 agencies within the meaning of Section 3 of Article I of the
13 California Constitution. Pursuant to that constitutional provision,
14 the Legislature makes the following findings to demonstrate the
15 interest protected by this limitation and the need for protecting
16 that interest:

17 In order for the California Gambling Control Commission to
18 meet its obligation, as imposed by the Tribal-State Gaming
19 Compacts, to maintain the confidentiality of tribal information, it
20 is necessary that the commission meet in closed session.